**S.B. CIVIL WRIT PETITION NO.5357/2003**
**(M/s Subash Projects & Marketing Ltd. vs. State of Raj. & Ors.)**

**Date :: 03.04.2007**

**HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS**

Mr.Anjay Kothari, for the petitioner.
Mr.N.M. Lodha, Additional Advocate General.

The present writ petition has been filed with the prayer that:

> "(i) Quash the impugned resolution in the meeting dt.4-7-2003, Ann.7 requiring the recovery from the contractor of the excise duty exemption on the goods purchased by the contractor for execution of the works contract.
>
> (ii) Quash the impugned communications/orders dt.14-8-2003, Ann.8, 21-8-2003 Ann.9, 25-8-2003 Ann.10 and dt.4-9-2003 Ann.12 issued by the various authorities by the respondent department.
>
> (iii) Hold that the respondent department is not entitled to deduct or recover any amount on account of alleged excise duty exemption from the petitioner company and not to withhold any payment due to the petitioner company against the work done by it."

In this case notices were issued to the respondents and by way of filing reply to the writ petition a preliminary objection has been raised by the respondents that the writ petition is not maintainable as the petitioner has not invoked Clause 23 of the contract agreement which provides for referring and deciding the disputes by the Standing Committee for settlement of disputes, therefore, the writ petition is premature and liable to be dismissed.

I have perused Annexure-13 and Clause 23 of contract agreement Which reads as under:-

> "**Clause 23: Standing Committee for Settlement of Disputes**
>
> If any question, difference or objection, whatsoever shall arise in any way, in connection with or arising out of this instrument, or the meaning of operation of any part thereof, or the rights, duties or liabilities of either party then, save in so far, as the decision of any such matter, as herein before provided for, and been so decided, every such matter constituting a total claim of Rs.50,000/- or above, whether its decision has been otherwise provided for and whether it has been finally decided accordingly, or whether the Contract should be terminated or has been rightly terminated, and as regards the rights or obligations of the parties, as the result of such termination, shall be referred for decision to the empowered Standing Committee, which would consist of the followings:-
> (i) Administrative Secretary concerned.
> (ii) Finance Secretary or his nominee, not below the rank of Deputy Secretary.
> (iii) Law Secretary or his nominee, not below the rank of Joint Legal Remembrancer.
> (iv) Chief Engineer-cum-Addl. Secretary of the concerned Department.
> (v) Chief Engineer concerned (Member-Secretary).
>
> The Engineer-in-charge, on receipt of application along with non-refundable prescribed fee, (the fee would be two percent of the amount in dispute, not exceeding Rs.one lac) from the Contractor, shall refer the disputes to the committee, within a period of one month from the date of receipt of application.
>
> Procedure and application for referring cases for settlement by the Standing committee shall as given in Form RPWA 90."

According to Clause-23 if any question, difference or objection, whatsoever shall arise in any way, in connection with or arising out of this instrument, it can be settled by the Standing Committee.

In this view of the matter, the petitioner is directed to invoke

Clause-23 by way of raising his dispute before the respondents and for that purpose he may file representation to the respondents within a period of one month from today and respondents are directed to refer dispute to the Standing committee as per Clause-23 and after reference the Standing Committee shall decide the matter within a period of three months.

The learned counsel for the petitioner prays that he may be given liberty to challenge the order of the Standing Committee if it is decided against him. It is always open for the petitioner to challenge the order if passed against him by the Standing Committee in accordance with law. No liberty is required to be given because it is always open under the law to challenge the validity of the order passed against the person.

With these directions, the writ petition is disposed of.

**[GOPAL KRISHAN VYAS],J.**

*A.K. Chahar/-*